definition of "proved", I considered that the explanation given, even when considered in connection with other evidence in the case, made the existence of the fact that the appellant had no knowledge that the goods were uncustomed so probable that a prudent man ought to act upon the supposition that that fact existed. Taking the whole evidence in this case I do not consider it is possible to say that there was evidence from which it could be inferred either that the duty on the goods in question had been paid or that the appellants did not know that the goods were uncustomed. I therefore agree with the conclusion arrived at by the learned President.

The second ground of appeal is that the evidence produced by the prosecution and the conduct of the appellants were sufficient to rebut the presumptions under section 115 and 131(2). The learned Counsel for the appellants submitted that the labels on some of the articles the subject of the charge raise a presumption that those articles did not come from outside the Federation. In ordinary circumstances this is so but the circumstances under which these articles were found strongly suggest that customs duties had not been paid thereon. With regard to the conduct of the appellants I do not see how in the circumstances of this case it can be said that the presumptions could have been rebutted.

With regard to the fourth ground of appeal, that is that the learned President did not give sufficient consideration to the evidence adduced by the appellants, the learned Counsel for the appellants referred me to the cases of *Lok Chak Wan v. Public Prosecutor*[14], *Rex v. Ayes*[15] and others to the effect that where the duty of giving an explanation is cast upon a defendant, and an explanation is given which is consistent with innocence, the Court must consider whether it might reasonably be true although not convinced of its truth. Counsel argued that the burden of proof on the defence as laid down in these cases is even lower than the test of the balance of probabilities.

With regard to the explanation given by the accused Goddard L. C.J. in *Rex v. Garth*[16] stated the law as follows:—

"I have more than once endeavoured to say what Abramovitch's Case does lay down, and it is this. Possession of property recently stolen, where no explanation is given, is evidence which can go to the jury that the prisoner received the property knowing it to be stolen. It must be borne in mind that the onus is always on the prosecution; but if the prisoner has given an explanation which raises a doubt in the minds of the jury on the question whether or not he knew that the property was stolen, then the ordinary rule applies and the case has not been proved to the satisfaction of the jury, and therefore the prisoner is entitled to be acquitted. It is not a question whether the prisoner gives an account which may possibly be true, as I have said, because any account may possibly be true. A much more accurate direction to the jury is: "If the prisoner's account raises a doubt in your minds, then you ought not to say that the case has been proved to your satisfaction."

It is clear from this statement that, as in every case, the explanation of the accused has to be considered together with the rest of the evidence in the case and that the accused will be entitled to an acquittal if, as a result of such explanation the existence of a material fact on which the prosecution relied is no longer so probable as to make a prudent man act upon the supposition that that fact exists.

In the present appeal, the learned President gave full consideration to the explanation given by the appellants and it is clear that he was not satisfied that it was true and it raised no doubt in his mind. The explanation could, naturally if taken by itself, be true in the sense that everything is possible but when considered together with all other proved facts in the case that explanation could not raise a doubt in the mind of a prudent man that it might be true.

No attempt was really made to show that duties on the goods in question had been paid, and it should not have been at all difficult to do so considering that the third appellant is the manager of the firm to which the goods belonged; in the circumstances it seems to me that apart from the presumption under section 115 of the Customs Ordinance, 1952, the burden of proving this fact would be upon the appellants by virtue of section 106 of the Evidence Ordinance, 1950.

In the case of *R. v. Ley & Smith*[17] the Lord Chief Justice in his summing up to the jury said:—

"The evidence that is called for the defence may have one of three different effects; it may convince you of the prisoners' innocence; it may throw some doubt on the evidence that has been given for the Crown that you may no longer feel satisfied that the prisoners are guilty; thirdly, it may and sometimes does strengthen the evidence which was given for the Crown."

In the present case the evidence adduced by the appellants has, to my mind, had the third effect.

The appeal must be dismissed.

*Appeal dismissed.*

Solicitors for the appellants: *Battenberg & Talma.*

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## CHEE SHIH KWANG v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) April 13, 1955]

[K. L. — Criminal Appeal No. 18 of 1955]

*Customs Ordinance, 1952, s. 131(1)(d) and (2) — Knowingly in possession of uncustomed goods — Burden of proof in cases of statutory presumption under s. 131(2).*

The appellant in this case was found guilty and convicted under s. 131(1)(d) of the Customs Ordinance

of being knowingly in possession of uncustomed articles. He appealed against the conviction and sentence. The defence was that the articles in question were unredeemed articles and part of the stock of a pawn shop in Kuala Lumpur. The articles had been given by the pawn shop to the appellant's uncle who was to take them out of Kuala Lumpur to sell them at a profit. As his uncle decided not to go outstation he gave the articles to the appellant to sell them at Ipoh.

The learned President found that the items referred to in the pawnshop's Unredeemed Articles Book were so vague and general in description that they were incapable of accurately identifying or being identified with the articles found in possession of the appellant.

Held: the appellant in this case had failed to discharge his burden of proof and therefore had not rebutted the presumption under the Customs Ordinance s. 131(2).

*Case referred to:—*

(1) *Saminathan & Ors. v. Public Prosecutor* (1955) M.L.J. 121.

MAGISTRATE'S CRIMINAL APPEAL.

*Lee Yew Siong* for the appellant.

*E. Brown* (Federal Counsel) for the respondent.

*Cur. Adv. Vult.*

**Buhagiar J.:** — The appellant was charged before the Sessions Court with an offence under section 131 (1) (d) of the Customs Ordinance, 1952, in that he was knowingly in possession of uncustomed goods, viz., certain items of jewellery. He was found guilty, convicted and sentenced to a fine of $1,265 or in default four months imprisonment.

The appeal is against conviction and sentence.

In *Saminathan & Ors. v. Public Prosecutor*[1], I have dealt at some length with the question of burden of proof in cases of statutory presumptions, in general and in cases of the presumption under section 131 (2) of the Customs Ordinance, 1952, in particular. There I held that in cases under the said section 131 (2) the accused has to prove that he did not know that the goods were uncustomed or adduce such evidence as to make the existence of the fact that the accused had no knowledge that the goods were uncustomed so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that that fact exists.

It was argued, however, by the learned Counsel for the appellant that the learned President misdirected himself in construing as suspicious the behaviour of the appellant when challenged by the Senior Revenue Officer (P. W. 2). It was submitted that the appellant was stopped at one of the road blocks which are common in present emergency and that even if the appellant when asked what he had in his possession stated that he had nothing on him (which is denied) such statement should not be held against the appellant, the appellant might reasonably have thought that the check at the road block was connected with the emergency rather than with the conveyance of uncustomed goods. That may or may not be so, but I do not consider that that is very material in this case. The defence was that the articles in question were unredeemed articles and part of the stock of a pawnshop in Kuala Lumpur. The articles had been given by the pawnshop to one Chee Yoon Pin, the appellant's uncle, who was to take them out of Kuala Lumpur to sell them at a profit. Chee Yoon Pin gave a receipt for these articles to the pawnshop. As Chee Yoon Pin decided not to go outstation he gave the articles to the appellant to sell them at Ipoh.

The learned President came to the conclusion that the receipt given by Chee Yoon Pin was fabricated for the purposes of this case and that the items referred to in the Unredeemed Articles Book were so vague and general in description that they were incapable of accurately identifying or being identified with, the jewellery found in possession of the appellant. I do not feel justified in interfering with these findings of fact.

It should have been quite easy for the defence to prove that the articles in question were part of the stock of unredeemed articles in the pawnshop but no definite evidence was adduced to show this. A book called 'Unredeemed Articles Book' was produced and this contained entries of certain articles or groups of articles each of which had a number with a reference to a previous number in another book; this other book contained entries indicating the original pledgor, date of pledge and description of article pledged. This book was not produced, and I therefore agree with the learned President that there was no satisfactory proof that the articles in question were part of the stock of the pawnshop, and that the appellant did not rebut the presumption under the Customs Ordinance, 1952.

The appeal is dismissed.

*Appeal dismissed.*

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## HEAP LEONG & CO. v. YONG KING LOKE; TAI CHIN SEONG — Objector

[O. C. J. (Wilson J.) April 22, 1955]

[K. L. — Civil Suit No. 31 of 1955]

*Fraud — Transfer of property with intent to defraud — Onus to prove — Appeal against release of attachment.*

The plaintiffs in this case on February 11, 1955, obtained judgment against the defendant in the sum of $6,288.77 and costs and pursuant to this judgment an order for attachment of the defendant's goods was made on February 20, 1955. On February 19, 1955, the objector was alleged to have purchased from the defendant one